IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 5.9.2007

CORAM:

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE R.REGUPATHI

H.C.P.No.478 of 2007

Vairam @ Vairamuthu .. Petitioner

Vs

1. The Secretary to Government,
   Home, Prohibition & Excise Department,
   Government of Tamilnadu,
   Fort St. George, Chennai 600009.

2. The District Magistrate and
   District Collector,
   Virudhunagar District,
   Virudhunagar. .. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India for issue of Writ of Habeas Corpus as stated therein.

For Petitioner : Mr.M.K.Subramanian
For Respondents: Mr.N.R.Elango
Additional Public Prosecutor

ORDER

(Order of this Court was made by P.D.DINAKARAN,J.)

The petitioner, Vairam @ Vairamuthu, son of Veluchamy, who is the detenu, who was incarcerated by order dated 5.3.2007 of the second respondent under Section 3(1) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982) branding him as a Goonda, has preferred this writ petition for issue of a Writ of Habeas Corpus to call for the records in connection with the order of detention passed by the second respondent dated 5.3.2007 in Cr.M.P.No.7/2007/Goonda against the

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petitioner, now confined at Central Prison, Madurai, to set aside the same and to direct the respondents to produce the above said detenu before this Court and set him at liberty.

2. The order of detention dated 5.3.2007 came to be passed based on the ground case said to have taken place on 31.1.2007 at about 11.00 hours, on the basis of the complaint lodged by one Sankar before the Inspector of Police, Krishnankovil Police Station. According to the complainant, while he was walking near Ambedkar statue in Sundarapandian Bazar, the detenu along with one Ravi @ Ravichandran @ Ravikumar @ Naina Ravi came in a motor cycle and demanded money. When the complainant refused, both of them forcibly took away a sum of Rs.210/- from his shirt packet by threatening him. When the complainant asked to return the money, the detenu attempted to cut his head with a long knife by uttering filthy words. The complainant escaped from the cut by bending his body. The other person also threatened the complainant and the general public, who were waiting for bus, by brandishing a long knife. They also picked up soda bottles from the nearby shops and thrown on the road side. The bottles fell on the road and scattered all over the road. The public apprehending danger to their lives ran for safety, shop vendors closed the shops and the entire traffic came to standstill causing insecurity in the minds of the public. Both of them decamped from the scene of occurrence. In this regard, a case was registered in Crime No.38 of 2007 on the file of Krishnankovil Police Station under Sections 341, 294(b), 397, 506(ii), 427 and 307 IPC.

3. The second respondent, taking note of this case as a ground case and finding that there is an adverse case pending against the detenu in Crime No.121 of 2007 on the file of Srivilliputtur Town Police Station for the offences punishable under Sections 147, 148, 307, 302 and 109 IPC, and having satisfied that there is a compelling necessity to detain him in order to prevent him from indulging in the activities which are prejudicial to the maintenance of public order, ordered his detention dubbing him as a Goonda.

4. The learned counsel for the petitioner challenges the impugned order of detention dated 5.3.2007 on the main ground that even though in the grounds of detention, it is mentioned that both the accused were produced before the Court of Judicial Magistrate No.III, Srivilliputtur on 1.2.2007 and lodged in Central Prison, Madurai, to judicial custody upto 16.2.2007, no supporting material viz., the remand order passed by the Judicial Magistrate, has been furnished to the detenu. According to the learned counsel, in view of the non supply of the essential document viz., remand report, the detenu was not in a position to make an effective representation and hence the order of detention vitiates. In

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support of his contention, the learned counsel for the petitioner relied upon the decision of the Apex Court in POWNAMMAL v. STATE OF TAMIL NADU AND ANOTHER [A.I.R. 1999 SC 618].

5. In POWNAMMAL v. STATE OF TAMIL NADU, cited supra, where the Tamil version of the remand order, which is a relied upon document was not supplied to the detenu even though it was demanded by the detenu, the Apex Court held thus -

> " 15. Adverting to the facts of this case, the appellant has made a representation for supply of Tamil version of the copy of order of remand and specifically stated that the detenue could not understand English language. Admittedly, Tamil version of order of remand was not furnished to her. A perusal of the grounds shows that the order of remand was relied upon by the second respondent to reach subjective satisfaction, so the detenue need not show that any prejudice was caused to her due to non-supply of the Tamil version of order of remand. Therefore, the High Court is not correct in holding that non-furnishing of the copy of the order of remand would not in any way prejudice the detenue."

6. In view of the decision of the Apex Court cited supra, we find some force in the argument of the learned counsel for the petitioner that the detenu was prejudiced by non-supply of the remand order, as he had been deprived of his opportunity to make an effective representation and hence, the impugned order of detention vitiates.

7. In the result, the habeas corpus petition is allowed and the order of detention is set aside. The detenu Vairam @ Vairamuthu is directed to be set at liberty forthwith, unless he is required in connection with any other case.

Sd/-
Asst. Registrar.

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Sub Asst. Registrar.

ATR

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To:

1. The Secretary to Government,
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   Government of Tamilnadu,
   Fort St. George, Chennai 600009.

2. The District Magistrate and
   District Collector,
   Virudhunagar District,
   Virudhunagar.

3. The Superintendent,
   Central Prison, Madurai.

4. The Public Prosecutor,
   High Court, Madras.

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